

EXHIBIT E

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Attorneys at Law

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Counsel

BY-HAND

December 8th, 2022

Office of the Insurance Commissioner
World Plaza 268
268 Ave. Muñoz Rivera
San Juan, P.R.

RECEIVED
OFFICE OF THE INSURANCE COMMISSIONER
13/2 DEC -8 PM 3:34

Re: Name of Loss Payee or Insured Claimant: Santa Rosa Mall, LLC

Gentlemen:

Enclosed please find the following documents for your information and/or consideration, regarding the matter of reference:

- 1) Notice Prior to Initiating Civil Action (Article 27.164, Puerto Rico Insurance Code) with its Exhibits and Attachments as follows:

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ATTACHMENT		
A	Letter from Debtors to CCM, dated October 26, 2017	76
A-1	Lease Agreement	77-130
B	Letter from CCM to AIG, dated October 30, 2017	131-139
C	Email from CVR Insurance Group (SRM's insurance broker) to AIG's Chief Claims Officer for Latin America & The Caribbean (Gustavo Sarabia), dated November 27, 2018	140-152
D	Confidential Settlement Agreement, dated January 17, 2019	153-173

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Sincerely yours,



Carlos R. Ríos Gautier

Encls.

NOTICE PRIOR TO INITIATING CIVIL ACTION
(Article 27.164, Puerto Rico Insurance Code)

1. A list of the names, domicile and contact information of each one of the Underwriters is attached hereto as **Exhibit A**.

As of this date the name of who is believed to be the lead Underwriter responsible for violating the Insurance Code is:

Lexington UK, a division of AIG Europe Limited, c/o Courtney E. Murphy, Esq.
Clausen & Miller, 28 Liberty St., 39 Floor, NY, NY 1005, Tel 212 805 3900, and
possibly now located at c/o Hinshaw & Culbertson LLC, 800 Third Avenue, 13th
Floor, New York, NY 10022 ¹

2. The name of the "loss payee" or "insured claimant" is Santa Rosa Mall, LLC (Santa Rosa Mall), with offices at 1498 F.D. Roosevelt Ave., Plaza Caparra Ste 201, Guaynabo, P.R. 00968. Additional covered certificate holders (Certificate Number 570069032839) are CCM Puerto Rico, Commercial Centers Management Realty S. en C., and 3 Pals Caribe, LLC.

The Property where the claim occurred is Santa Rosa Mall, Bayamon, Puerto Rico
Telephone No. (787) 622-9600

Represented herein by: Carlos R. Ríos Gautier, Ríos Gautier & Cestero, C.S.P, with
offices at 27 Calle González Giusti Ste 300, Guaynabo, P.R. 00968

E-mail riosgautierlaw@yahoo.com.

The insurance policy number is PTNAM1701557. **Exhibit B (hereinafter the Contract of Insurance.)**

3. The type of insurance is "All Risk of Direct Physical Loss or Damage Including Flood, Earthquake and Boiler & Machine Insurance". The policy insured Sears Holding Corporation "and any subsidiary, affiliated, or allied company ..., and any other party for which the Insured has the responsibility for providing insurance, as their respective interest may appear... all hereafter referred to as the "Insured."

4. The following Articles of the Insurance Code of Puerto Rico were violated by the Underwriters through their actions and omissions, and communications or lack thereof, and provide the basis to claim additional civil remedies:

- (a) Article 27.150 of the Insurance Code, 26 LPRA § 2714a, which requires that the insurer acknowledge receipt of a claim within 15 days after receiving the claim, and Santa Rosa Mall did not receive a timely response from the Underwriter within the statutory period; Santa Rosa Mall through its management entity, CCM, notified the Underwriters (AIG) of the claim by letter dated October 30, 2017. While Santa Rosa Mall does not know if and when the Underwriters responded to Sears,

¹ Article 11.220 of Puerto Rico's Insurance Code, 26 LPRA § 1122 provides that: (1) Two or more authorized insurers may jointly issue, and shall be jointly and severally liable on an underwriters' policy bearing their names.

nothing in Santa Rosa Mall's materials shows there was a response to its letter within the 15-day period.

- (b) Article 27.161(7) of the Insurance Code, 26 LPRA § 2716a (7) penalizes an insurer who forces an insured or claimant to file suit to be able to recover a valid claim. Despite multiple attempts to recover insurance policy proceeds following a valid claim, Santa Rosa Mall has not been made whole and the Underwriters have not complied with their contractual obligations under the policy, which will force Santa Rosa Mall to file suit to seek recovery; and
- (c) Article 27.164 of the Insurance Code, 26 LPRA § 2716d (1)(b)(i) requires an insurer to attempt in good faith to settle a claim when, under the circumstances it could have done so, had it acted fairly and honestly towards its insureds or loss payees with due regard for their interest.² Here, the Underwriters, with full knowledge of Santa Rosa Mall unresolved claim for losses arising from Hurricane Maria chose to release the insurance proceeds directly to Sears in contravention of the related lease and insurance policy requirements, of which the insurer was fully aware. Having done so, the Underwriters entered into a settlement and indemnification agreement with Sears, who at the time was under the protection of the bankruptcy court, and disregarded its indemnification obligation to Santa Rosa Mall as additional insured or loss payee.

5. The following confirms that Santa Rosa Mall is an Insured, additional insured or loss payee:

The *Contract of Insurance*, at page 3 includes Santa Rosa Mall among the insured. The "Named Insured" is defined as "Sears Holdings Corporation and any subsidiary, affiliated, associated, or allied company, corporation, firm, organization, partnership, joint venture, joint lease, or joint operating agreement [], as their respective interest may appear; **and any other party for which the Insured has the responsibility for providing insurance, as their respective interest may appear.**" (Emphasis added). Sections 6.02, 6.03 and 6.04 of the lease agreement between Santa Rosa Mall and Sears Roebuck de Puerto Rico, Inc. (a subsidiary of Sears Holdings Corporation) obligated Sears, as tenant, to ensure its or its parent corporation's insurance policies had loss payable clauses, and named Santa Rosa Mall as a loss payee.

Paragraph 39 of the *Contract of Insurance* provides that Aon Risk Services, Inc. is authorized to issue Certificate(s) or Evidence(s) of Insurance... naming Additional Named Insured(s), Loss Payee(s) or Mortgagee(s), and others for their respective

² Reference is made to Law No. 247 adopted on November 27, 2018, which applies retroactively to Hurricanes Irma and María as decided by the Supreme Court of Puerto Rico in *Consejo de Titulares Condo. Balcones de San Juan v. MAPFRE*, 2022 TSPR 15, February 3, 2022, and *Consejo de Titulares 76 Kings Court v MAPFRE*, 2022 TSPR 32, March 24, 2022.

rights and interests, subject always to the terms, conditions and limits of endorsements in respect of such additional interests. Santa Rosa Mall received certificates of insurance from Aon on behalf of Underwriters for many years on an annual basis. The aforementioned lease agreement also required the tenant to, or to have its parent corporation, cause the insurer to issue such certificates on an annual basis.

On October 25, 2017, after the passing of Hurricane Maria — a ***Certificate of Property Insurance*** was emailed to both, Santa Rosa Mall and Sears by Aon Client Services a department of Aon Client Services Central, Inc. d/b/a/ Aon Risk Insurance Services Central, Inc. See *Email from Aon to CCM and Sears, dated October 25, 2017. Exhibit C*

The contents of the *Certificate of Property Insurance*, Certificate Number 570069032839 (**Exhibit D**) show:

- (a) that it refers to “Sears Store No. 1915 – Santa Rosa Mall, Bayamon, PR”;
 - (b) that “Special Conditions/Other coverages” of said *Certificate of Property Insurance* state, among other things, that Coverage [is] subject to the lease requirements and that “Santa Rosa Mall, LLC... and Commercial Centers Management, LLC are included as Loss Payee in accordance with the policy provisions of the Property policy with respect to the property located at the above referenced Location”.
 - (c) that the policy was effective from June 1, 2017 through June 1, 2018, covering the time during which Hurricane Maria damaged the premises.
6. The undisputed facts and events which deprived Santa Rosa Mall of its right to the insurance proceeds are described in **Exhibit E** (with attachments).

The undersigned certifies that the information provided herein fully describes the events that took place leading to the violations of the provisions of the Insurance Code mentioned above. The undersigned further certifies that the present notice is being sent to the Insurance Commissioner and the Underwriters in compliance with Article 27.164 of the Puerto Rico Insurance Code. The undersigned acknowledges that a false material fact alleged herein or the failure to notify this notice to any of the parties required by law will be interpreted as if it was never notified.

The undersigned further certifies that this notice has been sent on this same date to the Underwriters at the following address:

Clausen Miller P.C.
Courtney E. Murphy, Esq.
28 Liberty Street 39th Floor
New York, NY 10005

Courtney E. Murphy, Esq.
Hinshaw & Culbertson LLC
800 Third Ave, 13th Floor
New York, NY 10022

Pursuant to Service of Suit Clause (U.S.A.), at page 47 of the Contract of Insurance (the Policy):

Messrs. Mendes & Mount
750 Seventh Avenue
New York NY 10019-6829

And to the Office of the Insurance Commissioner at the following address:

World Plaza 268
268 Ave. Muñoz Rivera
San Juan, P.R. 00918

In Guaynabo, Puerto Rico, this 6th of December 2022.

COMMERCIAL CENTERS MANAGEMENT
1498 Ave. F.D. Roosevelt, Suite 201
Guaynabo, P.R. 00968
Tel. (787) 622-9600

By:


JORGE FOURNIER

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